

## **REMARKS**

Claims 1-24 are pending in this application. By this Response, claims 1, 8, 9, 11, and 18 are amended for clarification purposes. Such amendments are not necessary for defining over any prior art of record. No new matter has been added by any of the amendments to the claims. Reconsideration of the claims is respectfully requested in view of the following remarks.

### **I. Telephone Interview**

Applicant's representative was unable to schedule a telephone interview prior to the response due date. Therefore, Applicant respectfully requests that the Examiner contact Applicant's representative to discuss this application prior to taking any further action on this case.

### **II. Objection to the Specification**

The Office Action objects to the specification stating that the term "IT simulation 218" on page 8 should be changed to "IT simulation 216." By this Response, the specification is amended in accordance with the Office Action's suggestion. Accordingly, Applicants respectfully request withdrawal of the objection to the specification.

### **III. Rejection under 35 U.S.C. §103(a)**

The Office Action rejects claims 1-24 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Engelking et al. (U.S. Patent Application Publication No. 2005/0049911). This rejection is respectfully traversed.

Filed herewith is a declaration under 37 CFR 1.131, signed by the inventor of the subject matter of the pending claims, setting forth facts and exhibits that establish reduction to practice of the present invention prior to the effective date of the reference,

or at least conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application. Specifically, the evidence provided in the declaration establishes conception or reduction to practice at least as early as May 20, 2003. This is prior to the effective date of August 29, 2003 of the Engelking et al. reference. Moreover, the present invention was filed on September 11, 2003 which is less than 4 months from the May 20, 2003 date. Thus, there was at least conception of the invention prior to the effective date of the Engelking reference coupled with due diligence in filing Applicant's application.

Therefore, having established invention of the subject matter of the claims set forth in the present application prior to the effective date of the Engelking reference, Applicant has eliminated the Engelking reference as prior art under 35 U.S.C. § 102 and thus, the Engelking reference cannot be used, either alone or in combination with other references, to establish alleged obviousness of the presently claimed invention. Accordingly, Applicant respectfully requests withdrawal of the rejection of claims 1-24 under 35 U.S.C. § 103(a).

#### **IV. Obviousness-Type Double Patenting**

The Office Action rejects claims 1-4, 8-14, and 18-21 on the ground of non-statutory obviousness-type double patenting over claims 1-4, 7-13, and 16-19 of co-pending U.S. Patent Application no. 10/666,868. This rejection is respectfully traversed.

Filed herewith is a terminal disclaimer disclaiming the term extending beyond that of the co-pending application. Under MPEP § 804.02:

A rejection based on a nonstatutory type of double patenting can be avoided by filing a terminal disclaimer in the application or proceeding in which the rejection is made. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Knohl*, 386 F.2d 476, 155 USPQ 586 (CCPA 1967); and *In re Griswold*, 365 F.2d 834, 150 USPQ 804 (CCPA 1966). The use of a terminal disclaimer in overcoming a nonstatutory double patenting rejection is in the public interest because it encourages the disclosure of

additional developments, the earlier filing of applications, and the earlier expiration of patents whereby the inventions covered become freely available to the public. *In re Jentoft*, 392 F.2d 633, 157 USPQ 363 (CCPA 1968); *In re Eckel*, 393 F.2d 848, 157 USPQ 415 (CCPA 1968); and *In re Braithwaite*, 379 F.2d 594, 154 USPQ 29 (CCPA 1967).

Thus, the non-statutory obviousness-type double patenting rejection of the claims in the present application has been overcome by the filing of the terminal disclaimer. Accordingly, Applicant respectfully requests withdrawal of the rejection under non-statutory obviousness-type double patenting.

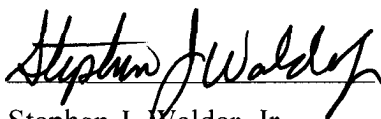
**V. Conclusion**

It is respectfully urged that the subject application is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,

DATE:

*January 29, 2008*



Stephen J. Walder, Jr.

Reg. No. 41,534

**WALDER INTELLECTUAL PROPERTY LAW, P.C.**

P.O. Box 832745

Richardson, TX 75083

(214) 722-6419

ATTORNEY FOR APPLICANT